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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

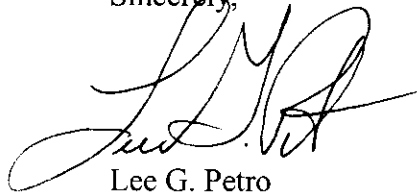
Re: Comments of Keystone Broadcasting Corporation
MM Docket No. 01-254
Amendment of Section 73.202(b), Table of Allotments

Dear Ms. Salas:

Transmitted herewith, on behalf of Keystone Broadcasting Corporation, is an original and four (4) copies of its Comments in the above-referenced proceeding.

Should there be any questions, please contact undersigned counsel.

Sincerely,



Lee G. Petro

Enclosures

cc: Ms. Nancy Joyner, 3-A267
Federal Communications Commission

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 25 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:	}	MM Docket No. 01-254
	}	
Maurice Salsa	}	RM – 10264
	}	
Keystone Broadcasting Corporation	}	RM – 10375
	}	
Linda Crawford	}	RM – 10376
	}	
Amendment of Section 73.202(b), Table	}	
of Allotments, FM Radio Broadcasting	}	
(Atoka, Haileyville, Clayton, Oklahoma)	}	

TO: CHIEF, ALLOCATIONS BRANCH

COMMENTS OF
KEYSTONE BROADCASTING CORPORATION

Pursuant to Section 1.420 of the Commission's rules, 47 C.F.R. 1.420 (2000), Keystone Broadcasting Corporation ("Keystone") hereby submits its "Comments" regarding the proposals for Channel 290A at Atoka, Oklahoma and Channel 289A at Clayton, Oklahoma. Both proposed allotments are considered by the Commission in conflict with Keystone's November 19, 2001 Comments and Counterproposal for allotment of Channel 290A at Haileyville, Oklahoma. On February 8, 2002, the Commission solicited comments regarding the three competing proposals. *Public Notice*, Rpt. No 2530 (rel. February 8, 2002).

As discussed in more detail below, the allotment of Channel 290A at Haileyville should be favored over the other two proposed allotments. First, Haileyville has no other local service, whereas Atoka, Oklahoma already has one AM and one FM station, along with a FM translator, providing service to the community.¹ Moreover, Haileyville should be preferred over Clayton due to

¹ Keystone Broadcasting Corporation is the licensee of Station KHKC-FM and KEOR(AM), Atoka, Oklahoma.

the higher population of Haileyville, and the fact that Clayton already has at least one other proposed allotment. Therefore, under the Commission's established FM allotment criteria, the allocation of Channel 290A at Haileyville would be preferred. Moreover, the proposal for Clayton lacks specific information concerning the community that is normally provided by proponents of a new FM allotment. In light of these factors, the Commission should allot Channel 290A at Haileyville, Oklahoma, and dismiss the proposals for the allotment of Channel 290A at Atoka, and Channel 289A at Clayton.

BACKGROUND

The petition for rulemaking for Channel 290A at Atoka, Oklahoma was filed by Maurice Salsa ("Salsa") on July 3, 2001. The Commission released a Notice of Proposed Rulemaking on September 19, 2001 seeking comment on the Petition. DA 01-2236. In response, Keystone filed its Comments and Counterproposal on November 19, 2001, proposing that, rather than add a third local radio station to Atoka, Channel 290A could be allotted to Haileyville, providing that community its first local service. Among the public interest factors detailed in the November 19 filing Keystone noted that Salsa's proposal would add a second local FM allotment, and the third local service, to Atoka, which would fall under Priority Four of the Commission's FM Allotment priorities.²

The other petition for rulemaking, proposing the allotment of Channel 289A at Clayton, Oklahoma, was filed by Linda Crawford ("Crawford") on October 17, 2001. As with Crawford's other 44 petitions for rulemakings filed within a four-month period,³ there is little information

² See *Revisions of FM Assignment Policies and Procedures*, 4 FCC 2d 88 (1988). The priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Id.*

³ Crawford has filed 45 petitions for rulemaking since August 2001. A list of these petitions are attached hereto as Exhibit B.

provided regarding Clayton, Oklahoma. In fact, the only information provided is the community's population and the fact that the community has a mayor, post office, and a chamber of commerce.

DISCUSSION

A. The Haileyville petition should be preferred over the Atoka petition.

As noted in Keystone's counterproposal, there are already two local stations providing service to Atoka. In contrast, there are no other local services licensed to Haileyville. Thus, as detailed in Keystone's November 19, 2001 filing, under the Commission's FM allotment priorities, the allotment of Channel 290A at Haileyville is preferable to that of a third local service at Atoka.

Attached hereto as Exhibit A is a list of various local businesses, churches, and government offices in Haileyville. As evident from this information, Haileyville operates its own schools, its own police department, its own fire department, and has a local housing authority office. Also important is that these entities identify with Haileyville.

Under the Commission's allotment preferences, a first local service for Haileyville should be preferred over a second allotment, and third local service for Atoka.

B. The Haileyville petition should be preferred over the Clayton petition.

Whereas Atoka already has two local services, both Clayton and Haileyville have none. As such, both communities would fall under Priority 3 of the Commission's FM allotment priorities. Under such circumstances, the Commission routinely compares the population of the two communities to determine which proposal would better serve the public interest.⁴

In the instant case, Haileyville has a population of 891 persons, whereas Clayton has a

⁴ See e.g., *Brightwood, Madras, Prineville and Bend, Oregon*, 2001 FCC LEXIS 5805 (Oct. 26, 2001) (finding that, among two Priority 3 proposals, the proposal with the larger population will prevail); See also *Athens and Atlanta, IL*, 11 FCC Rcd 3445 (1996) and *Blanchard, LA and Stephens, AR*, 8 FCC Rcd 7083 (1993).

population of only 719 persons. While the Commission does look to other factors in comparing communities, the fact that one community will provide service to a larger population is a major factor. The Commission will also consider whether the proposed community is a “community for allotment purposes.” Unlike Clayton, Haileyville clearly qualifies as a community for allotment purposes. In those cases where only cursory information is provided, as in the Crawford proposal, the Commission will deny the petition if the requisite “nexus has not been shown between the political, social and commercial organizations and the community in question.”⁵ Other than listing the mayor’s name and the fact that it has a volunteer fire department, the petition fails to provide names and/or addresses of (i) the businesses located in Clayton, (ii) any other social or civic organization located in Clayton, (iii) schools or libraries located in Clayton, or (iv) the governmental services which are located in Clayton.

Lastly, there is at least one other pending proposal for an FM allotment at Clayton. On October 16, 2001, Jeraldine Anderson filed a petition for rulemaking to allot Channel 241A at Clayton. This petition remains pending. Moreover, one day before Crawford submitted her petition for Channel 289 at Clayton, Salsa withdrew interest in a petition for rulemaking to allot Channel 232C3 at Clayton. The Commission had already issued a Notice of Proposed Rulemaking (DA 01-1907) to allocate Channel 232C3 at Clayton. The Commission has yet to act on Mr. Salsa’s request. Thus, at present, both proposals for Channel 232C3 and 241A are pending.

Given Crawford’s failure to demonstrate that Clayton is a community for allotment purposes, and considering that there is at least one, if not two other pending allotments for Clayton, the Commission cannot conclude that Clayton would be a preferable allotment over Haileyville. Clearly, a community with only 719 persons cannot support two Class A facilities, and a possible Class C3 facility. As is apparent, the public interest would not be served by yet another allotment at

⁵ See *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991).

Clayton. In light of these factors, and the presence of a viable proposal for Haileyville, the Commission should grant the competing request for a first allotment at Haileyville.

C. Other Public Interest Concerns Dictate Denial of The Petitions filed by Salsa and Crawford.

The volume of FM allotment proposals sponsored by Salsa and Crawford, combined with the absence of any supporting information in either Crawford's petition for Channel 289A, or Salsa's petition, and Salsa's subsequent withdrawal of interest for Channel 232C3, raise considerable and serious public interest concerns. These concerns further support the allotment of Channel 290A at Haileyville, and the dismissal of the petitions for Atoka and Clayton.

Attached as Exhibit B is a list of 45 petitions for rulemaking filed by Crawford during a brief, four month period. In each petition, she used the identical format, and provided the identical information. In no case did she provide any evidence that she made any real effort to determine whether the community was appropriate for allotment purposes. Moreover, attached as Exhibit C is a list of 47 petitions for rulemakings filed by Salsa in the past year, each of which are carbon copies, and interestingly, follow the same format as Crawford's.

Each of these petitions, along with Jeraldine Anderson's request for Channel 241A at Clayton, contain an expression of interest in the allotment, and the certification that the respective petitioner would apply for the construction permit, and if selected, construct the facility. The Commission requires such a certification to ensure that a newly allotted channel will not "lie vacant after the Commission had expended limited resources conducting a rule making proceeding."⁶ There is a serious question as to whether Salsa and Crawford can or intend to fulfill the necessary

⁶ *Santa Isabel, Puerto Rico and Christiansted, Virgin Islands*, 3 FCC Rcd 2336, ¶10 (1988). *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, ¶ 29 (1990).

commitments.

In the only broadcast auction conducted thus far, the average minimum upfront payment was over \$32,000 per allotment. The next FM auction (Auction #37) will require an average minimum upfront payment of over \$83,000 per allotment. Therefore, even under the best case scenario, should the Commission grant each of the proposed allotments, Salsa and Crawford will each need to submit payments in excess of **\$1.4 million dollars** to conform with their certifications to the Commission.

In the past, the Commission has investigated those situations where an applicant has flooded the Commission with applications for which they were financially incapable of constructing.⁷ Clearly, the instant matter requires a review by the Commission to determine whether Salsa and Crawford have the requisite level of financial ability and intent to satisfy the certifications already submitted to the Commission.

CONCLUSION


The allocation of Channel 290A to Haileyville, Oklahoma will provide that community its first local station. Haileyville is a vibrant community with all indicia of a community for FCC purposes. In contrast, Atoka already has two local broadcast stations, along with an FM translator delivering a second FM service. Moreover, Haileyville is a preferred allotment over Clayton based on the communities respective populations, and the demonstrable nexus between political, social and commercial organizations and the Haileyville community.

⁷ See Welch Communications, Inc., 5 FCC Rcd 4850 (1990); Texas Communications Limited Partnership, 5 FCC Rcd 5876 (1990); Brecze Broadcasting Company, Ltd., 8 FCC Rcd 1835 (1993) (applicant submitted 72 LPTV, 46 MMDS and 30 Cellular applications).

Therefore, Keystone Broadcasting Corporation respectfully requests that the Commission decline the allocation of Channel 290A at Atoka and Channel 289A at Clayton, and instead, allocate Channel 290A to Haileyville, Oklahoma.

Respectfully submitted,

KEYSTONE BROADCASTING COMPANY

By: 
M. Scott Johnson

By: 
Lee G. Petro

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Washington, D.C. 20005
(202) 408-7100
(202) 289-1504

Its Attorneys

February 25, 2002

EXHIBIT A

**HAILEYVILLE BUSINESS AND
GOVERNMENT ENTITIES**

Haileyville 66

Highway 270

Haileyville, OK 74546

Haileyville Christian Church

Haileyville, OK 74546

Haileyville Early Childhood

3rd & Riley Streets

Haileyville, OK 74546

Haileyville Elementary

3rd & Riley Streets

Haileyville, OK 74546

Haileyville Fire Department

110 E Main

Haileyville, OK 74546

Haileyville Housing Authority

417 2nd Street

Haileyville, OK 74546

Haileyville Kindergarten

3rd & Riely

Haileyville, OK 74546

Haileyville Public School

Haileyville, OK 74546

Country Kitchen

Highway 270

Haileyville, OK 74546

Haileyville-City of Police Department

City Hall

Haileyville, OK 74546

Haileyville Laundry

Haileyville, OK 74546

Haileyville Public School – Hope Academy

Haileyville, OK 74546

EXHIBIT B

LINDA CRAWFORD'S
PETITIONS FOR RULEMAKING

- | | |
|--------------------------|-------------------------------------|
| 1. Alpine, Texas | 24. Panhandle, Texas |
| 2. Balmorhea, Texas | 25. Premont, Texas |
| 3. Big Lake, Texas | 26. RM-10284, Eldorado, Texas |
| 4. Channing, Texas | 27. RM-10285, Hemphill, Texas |
| 5. Childress, Texas | 28. RM-10286, Richland Sprgs, Texas |
| 6. Colorado City, Texas | 29. RM-10290, Rocksprings, Texas |
| 7. Crane, Texas | 30. RM-10293, Taos, Texas |
| 8. Crosbyton, Texas | 31. RM-10294, McCamey, Texas |
| 9. Dalhart, Texas | 32. RM-10295, Dickens, Texas |
| 10. Eden, Texas | 33. RM-10296, Hamlin, Texas |
| 11. Encinal, Texas | 34. RM-10305, Jayton, Texas |
| 12. Floydada, Texas | 35. RM-10307, Camp Wood, Texas |
| 13. Freer, Texas | 36. RM-10315, Muleshoe, Texas |
| 14. Ft. Stockton, Texas | 37. RM-10376, Clayton, Oklahoma |
| 15. Guthrie, Texas | 38. Roaring Springs, Texas |
| 16. Hebbbronville, Texas | 39. Rotan, Texas |
| 17. Helper, UT | 40. San Isidro, Texas |
| 18. Lockney, Texas | 41. San Isidro, Texas |
| 19. Mackay, ID | 42. Sanderson, Texas |
| 20. Marsing, ID | 43. Smiley, Texas |
| 21. McGregor, Texas | 44. Sonora, Texas |
| 22. Mertzon, Texas | 45. Turkey, Texas |
| 23. Ozona, Texas | |

EXHIBIT C

MAURICE SALSA'S
PETITIONS FOR RULEMAKING

- | | |
|---------------------|-------------------------------|
| 1. Albion, OK | 25. Ossineke, MI |
| 2. Alpena, MI | 26. Pittsburg, OK |
| 3. Amity, AR | 27. Quitaque, TX |
| 4. Antlers, OK | 28. Red Oak, OK |
| 5. Attica, KS | 29. Red Oak, OK |
| 6. Carter, OK | 30. RM-10211, Clayton, OK |
| 7. Childress, TX | 31. RM-10222, Kiowa, OK |
| 8. Clarendon, TX | 32. RM-10223, Valliant, OK |
| 9. Clarendon, TX | 33. RM-10224, Broken Bow, OK |
| 10. Dickens, TX | 34. RM-10253, Hartshorne, OK |
| 11. Erick, OK | 35. RM-10264, Atoka, OK |
| 12. Ft. Supply, OK | 36. RM-10265, Wright City, OK |
| 13. Graham, TX | 37. RM-10270, Pawhuska, OK |
| 14. Grannis, AR | 38. RM-10280, Junction, TX |
| 15. Groom, TX | 39. RM-10301, Cherokee, OK |
| 16. Happy, TX | 40. Sayre, OK |
| 17. Hartshorne, OK | 41. Sedan, KS |
| 18. Hedley, TX | 42. Shamrock, TX |
| 19. Hugo, OK | 43. Silverton, TX |
| 20. Leedey, OK | 44. Spur, TX |
| 21. Matador, TX | 45. Wellington, TX |
| 22. Memphis, TX | 46. Westbrook, TX |
| 23. Millersburg, MI | 47. Wheeler, TX |
| 24. Minden City, MI | |

CERTIFICATE OF SERVICE


I, Donna Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 25th day of February, 2002 caused a copy of the foregoing "**COUNTER-PROPOSAL**" to be hand delivered (*) or mailed via First Class mail (**) to the following:

Ms. Nancy Joyner *
Allocations Branch
Mass Media Bureau
445 12th Street, S.W
Washington, D.C. 20554

Maurice Salsa **
5616 Evergreen Valley Drive
Kingwood, Texas 77345

Linda Crawford **
3500 Maple Avenue
Suite 1320
Dallas, Texas 75219

By:


Donna Fleming